

**Faith Center—WHCT Channel 18 and Local Union 42, International Brotherhood of Electrical Workers, AFL-CIO. Cases 1-CA-13123 and 1-CA-13226**

April 9, 1982

**DECISION AND ORDER**

On June 20, 1978, Administrative Law Judge George Norman issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed a copy of his brief previously submitted to the Administrative Law Judge as his brief in support of the Administrative Law Judge's Decision.

The National Labor Relations Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge only to the extent consistent herewith.

The Administrative Law Judge concluded that the Board's assertion of jurisdiction over Respondent Channel 18 is appropriate in the instant case. We disagree for the reasons set forth below.

The facts relevant to the jurisdictional issue are as follows: Faith Center Church, Inc., is a California corporation. The articles of incorporation state that Faith Center is a nonprofit church corporation, the purposes of which are "to provide a church, and in connection therewith a suitable and customary organization for the purposes of public worship and religious training." Faith Center amended its articles of incorporation in 1955 to include the operation of a Christian school and, in 1961, to include the operation of radio and television stations "for the primary purpose of disseminating the Gospel of Jesus Christ." Faith Center has one radio station, which is in Los Angeles, and three television stations in Los Angeles and San Francisco, California, and Hartford, Connecticut, respectively. Only the Hartford, Connecticut, facility is involved in this proceeding.

Faith Center's administrative offices and main sanctuary are in Glendale, California. Church services are conducted there three times each week before a "live" congregation of from 500 to 600 people. These services are broadcast on Faith Center's radio and television stations to an additional 400,000 to 500,000 people. Through telephone conversations and written correspondence with Faith Center's ministerial staff, the television audience is counseled, instructed, led in prayer and communion, and asked to tithe in support of Faith Center. This "church of the air" enables many who are confined to their homes or to convalescent homes,

hospitals, and other institutions to "attend" a church.

Dr. W. Eugene Scott, Faith Center's pastor and president, and his staff travel on a rotating basis to the three cities served by Faith Center's television stations. Each night over the three television stations, one by a live broadcast and the others by videotaped replay, Dr. Scott conducts a 3-hour program entitled "Festival of Faith" which includes extemporaneous religious services and discussions by Dr. Scott, Bible classes, religious testimony, and music. Dr. Scott closes the program with a "television communion" whereby viewers at home are invited to join the studio audience in the partaking of communion. Viewers in the three broadcast areas are invited to visit the television studios, to meet Dr. Scott and his staff, and to participate in prayer, refreshment, singing, and general religious fellowship.

Faith Center's television station in Hartford is Channel 18. In its Connecticut certificate of corporate authority, Channel 18's stated purpose is "to establish and maintain radio and television stations for the purpose of religious and charitable programming. . . ."

Ninety percent of Channel 18's programming is religious. The remaining 10 percent is secular programming necessitated by programming diversification requirements established by the Federal Communications Commission because of the relatively small broadcasting community in Hartford. These secular programs are selected based on their compatibility with Faith Center's doctrines and principles. This secular programming includes such shows as Lawrence Welk, Bozo the Clown, and Animal World. The requirement of nonreligious programming is unique to Channel 18 among Faith Center's stations.

The Administrative Law Judge found that the fact that Channel 18 is a television station renders it "commercial" within the generally accepted sense. Accordingly, and inasmuch as the Board has asserted jurisdiction over those operations of nonprofit religious organizations which are commercial in nature, he concluded that Channel 18 has acquiesced in governmental control by virtue of its being licensed by the Federal Communications Commission and thus its argument that its labor relations are not subject to "control" or "interference" by the Board "lacks consistency and cogency." Having determined that operations such as those of Channel 18 are not excluded from Board jurisdiction, the Administrative Law Judge examined the nature and sources of Channel 18's and Faith Center's income, and determined that Chan-

nel 18 also meets the Board's monetary jurisdictional standards applicable to television stations.

We do not disagree with the Administrative Law Judge's conclusion that broadcasting is commonly a commercial endeavor. Nor do we disagree with his conclusion that Channel 18's operations have an impact on interstate commerce and meet the Board's monetary standards for asserting jurisdiction over television stations. It is also beyond dispute that Channel 18 could not operate but for its acceptance of licensing and regulation by the Federal Communications Commission. However, given the particular circumstances of this case, the factors on which the Administrative Law Judge relies are not sufficient to warrant the Board's assertion of jurisdiction over Channel 18.<sup>1</sup>

The most salient fact of this case is that Faith Center's broadcasting effort through Channel 18 is essentially an electronic extension of its church in Glendale. Faith Center is, in short, an electronic church of the air. Thus, through broadcasts of religious services over Channel 18, Faith Center provides religious instruction and fellowship to its viewer congregation much as do its more conventional counterparts. Faith Center's congregation in turn supports the Church's endeavors through monetary contributions. In fact, the sole difference between Faith Center and other better known religious denominations is that Faith Center operates largely by means of electronic media.

As the Administrative Law Judge acknowledges, the Board would not assert jurisdiction over churches which operate in a conventional sense using conventional means. There is no persuasive reason for reaching a different result here. Thus, the difference in the *means* by which Faith Center chooses to advance its religious message furnishes no basis in fact or law for the assertion of jurisdiction. And, the assertion of jurisdiction over Faith Center could well raise precisely the serious constitutional questions envisioned by the Supreme Court in its decision in *N.L.R.B. v. The Catholic Bishop of Chicago, et al.*, 440 U.S. 490 (1979).<sup>2</sup>

<sup>1</sup> As an initial matter, we find no basis for the Administrative Law Judge's conclusion that Channel 18 has acquiesced in governmental "control" of its labor relations by virtue of the fact that it is licensed by the Federal Communications Commission. It should be apparent that the reasons for the Federal Communications Commission's regulation of Channel 18's broadcasting and the justification therefor are not dispositive of the Board's inquiry, for here we are dealing with a different Federal act, and a different congressional mandate. In fact, Federal Communications Commission regulation of Channel 18 has not been viewed as requiring or justifying coverage under other laws and acts administered by other Federal agencies. Thus, for example, the parties have stipulated that Channel 18 is exempt from Federal income tax, the Federal Unemployment Compensation Program, the Equal Employment Opportunity Act, and the Employee Retirement Income Security Act.

<sup>2</sup> In that case, involving the Board's assertion of jurisdiction over certain church-operated secondary schools, the Court declined to construe the Act in a manner which would raise "difficult and sensitive questions

Leaving aside the question of whether Faith Center is a "church" in the full and commonly accepted sense of that term, a close reading of precedent persuades us that the assertion of jurisdiction here would depart from the Board's traditional policy of declining jurisdiction over the "purely" religious, noncommercial activities of noncommercial, nonprofit religious organizations. Thus, for example, in *Board of Jewish Education of Greater Washington, D.C.*, 210 NLRB 1037 (1974), the Board held that it would not assert jurisdiction over a nonprofit religiously oriented institution whose activities were noncommercial in nature and were intimately connected with the religious activities of that institution. The employer found exempt from the Board's jurisdiction in that case provided evening and weekend instruction in Judaism and Hebraic study, and the Board found that its sole purpose was to further Jewish education and to nurture Jewish religious beliefs.<sup>3</sup>

It is also clear from previous Board decisions that the Board has declined jurisdiction over some activities of religious institutions even where such activities may be viewed as generally commercial in nature. Of particular significance in this regard is *Lutheran Church, Missouri Synod*, 109 NLRB 859 (1954), a case which is quite similar to the instant one. There the Board declined to assert jurisdiction over a nonprofit radio station owned and operated by the Missouri Synod of the Lutheran Church which broadcast religious programs, music, and public service programs. The Board concluded that the assertion of jurisdiction over a religious organization which operates a radio station on a noncommercial, nonprofit basis strictly to promote its religious objectives would not effectuate the purposes of the Act.<sup>4</sup>

arising out of the guarantees of the First Amendment Religion Clauses." *Id.* at 507.

<sup>3</sup> We note that in several recent decisions the Board has continued to recognize, and has preserved, the distinction between activities of religious organizations that are "purely religious" activities and those that are not "purely religious." The Board has continued to make this distinction even though on the particular facts of the case presented the Board has found that its jurisdiction is appropriately asserted. See *Catholic Community Services*, 247 NLRB 743 (1980); *World Evangelism, Inc.*, 248 NLRB 909, 913 (1980); *Jacobo Marti & Sons, Inc.*, 255 NLRB 1428 (1981).

<sup>4</sup> We note that, while approximately 30 percent of Channel 18's programming is produced by other religious organizations, and a small portion of this 30 percent is broadcast in exchange for a monetary donation by the other religious organization, this arrangement is in furtherance of the same religious objectives embodied in Channel 18's own programming. Thus, we see no reason why contributions from other religious organizations convert Channel 18 into a commercial operation. Furthermore, the 10 percent of Channel 18's programming which is secular is broadcast solely to meet the programming diversification requirements of the Federal Communications Commission. In such circumstances, the fact that Channel 18 broadcasts a minimal amount of secular programming does not in any meaningful sense detract from the conclusion that Channel 18 is operated strictly to promote the religious objectives of Faith Center.

Finally, a case worthy of note is *Motherhouse of the Sisters of Charity of Cincinnati, Ohio*, 232 NLRB 318 (1977), which involved employees who provided, *inter alia*, food, laundry, and power services to a nursing home leased by an order of Catholic nuns to a hospital for the care of aged and infirm members of the order and close relatives of members of the order. The employees sought were employed by the order. The Board majority held that, while provision of those types of services to a nursing home was normally a commercial endeavor, in the circumstances of that case the services were provided on a noncommercial basis and were ancillary to the order's religious objectives. Accordingly, the Board majority concluded that it would not effectuate the purposes of the Act to assert jurisdiction.

In sum, it is evident that Faith Center-Channel 18 is in purpose and function indistinguishable from "conventional" churches. That Faith Center utilizes a television station as its pulpit to the world does not, and cannot, alter that conclusion. That it serves the needs of its followers through a media approach does not, in our view, diminish or detract from its status as a church. Moreover, well-settled and consistent Board precedent argues persuasively for a finding that Channel 18's broadcasting is a "purely religious" activity carried on by a religious institution or, at the very least, constitutes an activity so ancillary to Faith Center's religious objectives as to warrant our declining jurisdiction. Accordingly, we shall dismiss the complaint in its entirety.

### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the complaint herein be, and it hereby is, dismissed in its entirety.

MEMBERS FANNING and JENKINS, dissenting:

We disagree with our colleagues who, solely on the basis of their exercise of discretion in administering the National Labor Relations Act, have declined to assert jurisdiction over Respondent's radio and television broadcast operations.

In reaching this conclusion, they have placed great reliance on *Lutheran Church, Missouri Synod*, 109 NLRB 859 (1954), where the Board similarly declined to exercise jurisdiction over a religious, noncommercial radio station. Their reliance on this case is misplaced, however, as the subsequent development of the law with respect to our exercise of jurisdiction has nullified the precedential value of this decision.

We did not exercise jurisdiction in *Lutheran Church* because, under the standards prevailing at the time, we consistently refused to exercise jurisdiction over nonprofit, noncommercial enterprises.<sup>5</sup> This standard was eroded somewhat upon the Board's recognition that nonprofit, noncommercial enterprises such as educational institutions had a substantial effect on commerce and that our jurisdiction in that area should be exercised.<sup>6</sup> The exemption grew narrower once the Board ascertained that the focus of our analysis should be an employer's impact on commerce, rather than whether the employer was engaged in a for-profit or "commercial" enterprise.<sup>7</sup> In *St. Aloysius Home*,<sup>8</sup> the Board explicitly reformulated the standard for the exercise of jurisdiction over nonprofit institutions, and entirely eliminated the earlier distinction between profit and nonprofit enterprises:

Since the distinction between profit and nonprofit institutions, for jurisdictional purposes, has been eliminated, we see no reason to establish separate standards for institutions that seek to accomplish the same end but differ only in whether they are charitable or noncharitable. The sole basis for declining or asserting jurisdiction over charitable organizations will now be identical with those which are not charitable. Therefore, since the Employer's gross revenue exceeds the jurisdictional standards for such specialized institutions, we find that it would effectuate the policies of the Act to assert jurisdiction herein. [224 NLRB at 1345.]

While it was not expressly stated in *St. Aloysius Home*, it has since become clear that the Board recognized that the noncommercial nature of the enterprise is irrelevant in deciding whether to exercise jurisdiction.<sup>9</sup>

In considering Respondent's impact on commerce, the majority has conceded that Respondent's revenue from radio and television broadcast operations is sufficient in amount to meet our jurisdictional standard of \$100,000 gross income for employers in this field.<sup>10</sup> Indeed, Respondent's gross income in excess of \$3 million meets this standard, even if only its \$355,000 income from the sale of air time to other religious organizations is consid-

<sup>5</sup> See *The Trustees of Columbia University in the City of New York*, 97 NLRB 424 (1951), cited therein.

<sup>6</sup> *Cornell University*, 183 NLRB 329 (1970).

<sup>7</sup> *The Children's Village, Inc.*, 186 NLRB 953 (1971); *Jewish Orphan's Home of Southern California a/k/a Vista Del Mar Child Care Services*, 191 NLRB 32 (1971).

<sup>8</sup> *The Rhode Island Catholic Orphan Asylum, a/k/a St. Aloysius Home*, 224 NLRB 1344 (1976), overruling *Ming Quong Children's Center*, 210 NLRB 899 (1974).

<sup>9</sup> *The Salvation Army, Inc.*, 225 NLRB 406, 407 (1976).

<sup>10</sup> See *Raritan Valley Broadcasting Company, Inc.*, 122 NLRB 90 (1958).

ered,<sup>11</sup> an amount separate from the remaining income of \$2,700,000 received from audience contributions.<sup>12</sup>

The majority asserts, however, that Respondent's broadcast operation is essentially an electronic extension of its church in Glendale, California, and that it is an electronic church of the air. However this may be, the content of the stations' programming has no direct bearing on the employment of its employees who are responsible only for the nonreligious electronic and mechanical operation of the equipment, need not be members of Respondent in order to be employed, and, as far as the record shows, function in the same capacity as employees of typical commercial radio and television stations.

Inasmuch as the National Labor Relations Act seeks to regulate only the secular aspects of employment relations, the religious aims or the religious orientation of various classes of employers is insufficient cause for us to decline the exercise of jurisdiction. Such intervention of a Federal regulatory authority does not infringe on religious beliefs, and to the extent that a claim might be made that conduct based on religious beliefs is impinged upon, it is settled that "the latter may be curtailed for the protection of society and has been so curtailed in a wide range of areas including the labor relations area."<sup>13</sup> The exercise of our regulatory authority, despite its impact on conduct based on religious beliefs, is justified, in view of its purely secular purpose and the compelling state interest in the prevention of labor disputes affecting commerce.<sup>14</sup>

By a slight change in Respondent's programming, for example, by the inclusion of paid commercial advertisements along with its religious programming,<sup>15</sup> matters which would have negligible impact

on the employment responsibilities of Respondent's secular employees or on Respondent's religious activities, it would appear that under the majority view Respondent's stations would be transformed into broadcast enterprises subject to the statute.<sup>16</sup> We see no reason for such disparate results.<sup>17</sup>

In short, where a religious organization stands in the relation of an employer to employees engaged in positions of a secular nature and the employing organization's impact on commerce is of a sufficient degree, the employer's distinct relationship with secular employees may be subject to the jurisdiction of the National Labor Relations Act. To this extent, it is irrelevant that the focus of the religious organization's enterprise is the dissemination or practice of religious beliefs.<sup>18</sup>

Accordingly, we would affirm the Administrative Law Judge in asserting jurisdiction.

<sup>16</sup> See *Port Arthur College*, 92 NLRB 152 (1950); see also *Alabama Religious Broadcasting Company, Inc.*, 221 NLRB 892 (1975).

<sup>17</sup> While Respondent might claim that its religious orientation may result in a certain degree of tension between its religious beliefs and employees who act contrary to those religious beliefs, this tension is likewise present where we have exercised jurisdiction over more typical commercial enterprises operated by religious entities. As the employees involved herein act in an entirely secular capacity, the possible tensions involved herein do not differ in any significant respect. Due to the secular nature of the employees' occupations, the constitutional questions addressed by the Supreme Court with respect to the "critical and unique role of the teacher in fulfilling the mission of a church-operated school" are not here present. See *N.L.R.B. v. Catholic Bishop of Chicago, et al.*, 440 U.S. 490, 501 (1979). See also *St. Elizabeth Community Hospital*, 259 NLRB 1135 (1982).

<sup>18</sup> See *Christian Board of Publication*, 13 NLRB 534 (1939); *The Sunday School Board of the Southern Baptist Convention*, 92 NLRB 801 (1950).

## DECISION

### STATEMENT OF THE CASE

GEORGE NORMAN, Administrative Law Judge: These cases were heard by me in Boston, Massachusetts, on January 20, 1978. A complaint and notice of hearing was issued on June 29, 1977,<sup>1</sup> alleging that Faith Center—WHCT Channel 18 (herein called FC or Respondent) violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act, as amended (herein called the Act); by threatening its broadcast engineers with reprisals for engaging in activity on behalf of Local Union 42, International Brotherhood of Electrical Workers, AFL-CIO (herein called the Union); by discharging them for this activity; by conditioning their rehire on abandonment of the Union; and in other respects interfering with employees' Section 7 rights. The complaint also alleges unilateral promotions of certain broadcast engineers and changes in their benefits at a time when the Union represented a majority of them in an appropriate unit.

On July 15, an order consolidating cases amended complaint and notice of hearing issued adding to the outstanding complaint further allegations of unilateral

<sup>11</sup> Through this commercial sale of air time and other arrangements, over 30 percent of Respondent's total broadcasting is produced by religious organizations other than Respondent. To this extent, Respondent's operations are less that of a specific church, and more that of a religious forum. The majority's claim, in fn. 4 above, that "this arrangement is in furtherance of the same religious objectives embodied in Channel 18's own programming," is true only if the religious beliefs of different religious organizations are interchangeable. As these religious organizations are not otherwise affiliated with Respondent, the record does not support the majority's claim. In this respect, the majority goes further than the Board did in *Board of Jewish Education of Greater Washington, D.C.*, 210 NLRB 1037 (1974), and *Motherhouse of the Sisters of Charity of Cincinnati, Ohio*, 232 NLRB 318 (1977). In those cases the Board declined to assert jurisdiction over employers where the services provided were ancillary to the religious objectives of that institution, not a multitude of religious institutions.

<sup>12</sup> See *Pacifica Foundation-KPFA*, 186 NLRB 825 (1980); *Viewer Sponsored Television Foundation, Inc., d/b/a KVST-TV*, 217 NLRB 419 (1975).

<sup>13</sup> *The First Church of Christ, Scientist in Boston, Massachusetts*, 194 NLRB 1006, 1007 (1972), and cases cited therein. See also *Good Foods Manufacturing & Processing Corporation, Chicago Lamb Packers, Inc.-Division*, 195 NLRB 418 (1972).

<sup>14</sup> *First Church of Christ*, 194 NLRB at 1007; *Cantwell et al. v. Connecticut*, 310 U.S. 296, 303-304 (1940).

<sup>15</sup> Although Respondent does broadcast commercial messages on its Hartford television station, these New Haven television station, these broadcasts result in no direct payments to Respondent.

<sup>1</sup> Unless otherwise indicated, all events herein occurred in 1977.

changes by FC in certain working conditions and benefits of its broadcast engineers violative of Section 8(a)(1) and (5) of the Act.

A review of the answer to the pleadings and stipulations of the parties reveals that the only remaining allegations to be resolved are the following: paragraph 3—FC engages in commercial and noncommercial TV broadcasting; paragraph 9(b)—the discharge of Lawrence Burke on or about May 18; paragraph 10—the failure to reinstate Lawrence Burke from his discharge on or about May 18 until December 1; and paragraph 20—the activities of FC have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

All parties have been afforded full opportunity to appear, to introduce evidence, to examine and cross-examine witnesses, and to file briefs. Based on the entire record, including the briefs filed on behalf of the parties, and upon my observation at the hearing of a videotape recording of a television broadcast on May 12 by FC's president and pastor, Dr. W. Eugene Scott, which videotape was introduced into evidence on joint motion of the parties, I make the following:

#### FINDINGS OF FACT

##### I. JURISDICTION

Faith Center—WHCT Channel 18 was incorporated as a California nonprofit church corporation in 1947, under the original name "Maple Chapel." The name was changed in April 1966 to Faith Center Church, Inc. A copy of the articles of incorporation of FC is on file with the Office of the California Secretary of State.

The present president and pastor of FC is W. Eugene Scott, Ph. D. who has served in such capacity since his election thereto in October 1975. Pastor Scott also serves as president of Full Gospel Fellowship of Churches International, a 2000-member congregation fellowship of Christian churches headquartered in Dallas, Texas, with which FC is affiliated.

The articles of incorporation of FC state that the purposes for which the corporation exists are "to provide a church, and in connection therewith a suitable and customary organization for the purpose of public worship and religious training." The articles further state:

That this is a non-profit corporation, which does not contemplate pecuniary pecuniary gain or profit to the members thereof.

. . . That the property is irrevocably dedicated to religious, charitable, hospital, and educational purposes, so that upon the liquidation, dissolution, or abandonment of the owner, the property will not inure to the benefit of any private person except the fund, foundation or corporation organized and operated for religious, hospital or educational purposes.

WHCT-TV Channel 18, Hartford Christian Television (herein referred to as Channel 18) is the New England broadcast outreach of FC.

FC is afforded exempt status as a nonprofit church corporation by section 501(c)(3) of the internal revenue code from Federal income tax. In addition, FC issues contribution credit for offerings gifted to its ministries pursuant to section 170(b)(1)(A) of the Internal Revenue Code, qualifying as a tax exempt religious organization defined in section 1.511-2 of the Regulations of the Internal Revenue Service. As such, FC may and does grant, in consideration for donations submitted to any of its ministries, including Channel 18, contribution credit of up to 50 percent of the taxable income as compared with 30 percent of taxable income allowable to donors to nonreligious institutions exempt under I.R.C. § 501(c)(3).

In February 1955, FC amended its articles of incorporation to include the operation of a Christian school located in Glendale, California. It has been operating for over 22 years. In October 1961, FC amended its articles of incorporation to include the operation of radio and television stations, "To provide, establish and maintain radio and television stations for the primary purpose of disseminating the Gospel of Jesus Christ." FC opened its first broadcast entity in 1956, radio station KHOF (King's House of Faith) FM radio 99.5 in the Los Angeles area, the first exclusively religious FM radio station in the United States.<sup>2</sup> KHOF-(FM) has operated for over 20 years in the southern California area, and was a pioneer in the field of religious broadcast programming. In December 1969, FC opened KHOF-TV Channel 30 in Los Angeles, the first exclusively religious color television station in the United States. In November 1971 and February 1972, respectively, FC opened WHCT-TV Channel 18 and KVOF-TV Channel 38 in San Francisco (King's Voice of Faith), completing FC's complement of four broadcast religious ministries.

The administrative officers and main sanctuary of FC are located in Glendale, California. Church services are held three times weekly in the Glendale sanctuary and are attended by 500 to 600 members and guests of FC's "live" congregation.

Through radio and television stations in California and Connecticut, an audience of 400,000 to 500,000 view these same services. The church considers this television audience to be its "television" congregation and a great number of viewers consider FC their "church of the air." Through telephone counseling and written correspondence with the church's ministerial staff, the television audience may be counseled, instructed, led in prayer and communion, and asked to tithe in support of FC. Countless thousands restricted to convalescent homes, prisons, hospitals, or their homes are afforded the opportunity through television of attending a "church of the air."

In addition to weekly church services in the Glendale sanctuary, which are televised several times through the following week over the radio and television stations, Pastor W. Eugene Scott and his "FESTIVAL OF FAITH" staff travel to all three cities served by church stations on a rotating basis, holding extemporaneous reli-

<sup>2</sup> Apparently the 1961 amendment to the articles of incorporation referred to above was to accommodate an existing radio station (1956) and to permit new facilities to be established.

gious services, Bible classes, and musical variety shows before FC's television cameras.

Viewers in the three broadcast areas are invited to visit the television studios in person, meet Pastor Scott and his staff, and participate in prayer, refreshment, singing, and general religious fellowship. Each night over the three stations, one live and the other by videotape replay, the "FESTIVAL OF FAITH" occurs, with Pastor Scott closing the nightly religious activities with a "television communion" whereby viewers in the home are invited to join the studio audience in partaking of the "HOLY ELEMENTS."

#### Channel 18

Channel 18 was donated by RKO General, Inc., in 1971 to FC. FC granted contribution credit to RKO General, Inc., pursuant to its tax exempt religious status under the Internal Revenue Code.

In December 1971, FC applied for and was granted a certificate of corporate authority in the State of Connecticut. Its corporate purpose was asserted to be: "... to establish and maintain radio and television stations for the purpose of religious and charitable programming ..."

Channel 18 assumed the state and Federal income tax exemption held by FC in its California ministries. The Hartford station also assumed exempt status under the Federal Unemployment Compensation Program, the Equal Employment Opportunity Act, and the Employment Retirement Security Act. In addition, under Connecticut state law, channel 18 has been declared exempt from State corporate business tax, pursuant to section 12-213 of the Connecticut General Statutes.

Channel 18 is also exempt from the provisions of the Connecticut Labor Relations Act by virtue of an exemption issued on January 18, 1977, by N. T. Wierbicki, supervisor of the Employer Status Union of the State Labor Department, pursuant to section 31-22(a)(1)(E) of the Connecticut General Statutes.

Moreover, under Connecticut law, Channel 18 is exempt from sales and news tax, exempt status being issued in the form of a tax exemption permit from the state tax commissioner, dated December 1972, pursuant to section 12-412(h) of the Connecticut General Statutes.

Channel 18 pays no fees or compensation whatsoever to the Associated Press, Inc., United Press, Broadcast Music Inc., American Society of Composers, etc. (ASCAP), or any other national wire service or music copyright organization. It has no connection or affiliation with any network other than FC. It broadcasts a television signal over an approximate 100-mile radius to points in Hartford, Connecticut; Springfield, Massachusetts; and Long Island, New York.

Channel 18 has gross revenues from all sources in excess of \$100,000 a year, and expends annually in excess of \$5,000 relating to the receipt of goods and services from points outside the State of Connecticut. Channel 18 broadcasts approximately 95 hours each week, averaging 16 hours on Sundays, 9 hours on Saturdays, and 12 hours on weekdays. The programming presented is selected in order to provide the New England viewers with a diverse and balanced spectrum of religious programming

and entertainment, all of which conforms with the doctrines and principals of FC and comply with programming diversification requirements established for the Hartford area by the Federal Communications Commission. The programming aired on Channel 18 may be divided into four basic categories as follows:

#### ONE: FAITH CENTER CHURCH PROGRAMMING

This category includes television programming aired on WHCT-TV Channel 18, Hartford Christian Television, produced and provided by FAITH CENTER CHURCH at one of its three television stations. Included herein are such productions as *Ken Connolly, Christ, the Living Word, Dr. Gene Scott presents Domata, Voice of Faith* (weekly Bible teaching by Pastor Scott), *Living Faith* (Weekly Glendale sanctuary services with Dr. Scott), *Festival of Faith* (church "signature" show, including singing, preaching, religious testimony), and special events and concerts produced by FAITH CENTER CHURCH. This category covers approximately sixty percent (60%) of the broadcast week at Channel 18.

#### TWO: GUEST RELIGIOUS PROGRAMMING, SUSTAINED BASIS:

This category includes television programming syndicated and produced by religious organizations other than FAITH CENTER CHURCH. With production costs obtained from sources in other areas, these programs do not solicit for donations on WHCT-TV Channel 18, Hartford Christian Television, and thus are broadcast without payment for, or by, the religious organizations supplying the video-tapes to Channel 18. These programs are "sustained" by FAITH CENTER CHURCH, inasmuch as the costs for airing them is absorbed by FAITH CENTER CHURCH. This category includes approximately twenty-five percent (25%) of the broadcast time on Channel 18 each week.

#### THREE: GUEST RELIGIOUS PROGRAMMING, DONATION BASIS:

This category includes television programming syndicated and produced by religious organizations other than FAITH CENTER CHURCH. This programming is differentiated from Category Two programming in that these religious groups utilize part of the airtime on Channel 18 to solicit donations direct to these organizations. These groups make money contributions to FAITH CENTER CHURCH for each broadcast aired. These organizations must substantiate their religious non-profit status (IRC 501(c)(3)) to FAITH CENTER CHURCH, and must not include "sales" or commercial solicitation of any kind in the course of their fund-raising techniques. All such donations must be receipted, with contribution credit, and qualify for IRC 501(c)(3) tax exempt status. The

average percentage of programs in this category at Channel 18 is about five percent (5%) of the broadcast week.

**FOUR: SECULAR PROGRAMMING ON BARTER BASIS:**

This category represents a type of programming unique to Channel 18 among FAITH CENTER CHURCH stations, inasmuch as none of the California stations participate in barter secular programming arrangements. Best described as a "half-barter" arrangement when compared with the usual utilization of barter shows by commercial stations, this programming comes complete with non-religious commercials from film distributors for airing on Channel 18. Only half of the commercial spots in each show are supplied by the distributor, and the remaining half of the commercial breaks are to be filled by the station operated with its own commercial spots from local businesses. In exchange for the right to air the first half of the spots, the distributor supplies the video-half of the spots, the distributor supplies the video-tape free. In the unique case of Channel 18, no commercial spots are added by the station. Channel 18, required by the Federal Communications Commission to air certain amounts of secular (non-religious) programming, desires only the use of the secular programming, and fill the "station's half" of the commercial breaks with public service announcements ("PSA's"). Thus, Channel 18 receives none of the usual advertising revenues associated with "full barter" arrangements. Channel 18 is part of a relatively small broadcast community in Hartford, when compared with the populous San Francisco Bay Area and Los Angeles Basin Area of FAITH CENTER CHURCH's other stations, Channel 38 and Channel 30. CHURCH's other stations, Channel 38 and Channel 30. As such, the requirement of non-religious diversity programming is unique to Channel 18 among FAITH CENTER CHURCH stations. There are no barter programs whatsoever on the other stations of FAITH CENTER CHURCH. FAITH CENTER CHURCH participates in these "half-barter" arrangements in Hartford because of the prohibitive costs of purchased-outright secular programming. While religious programming is widely available without cost to religious broadcasters (indeed, many of the suppliers must pay for airtime), the secular entertainment shows either come from national network feed, under film contract, or through barter arrangements. Approximately ten percent (10%) of the Hartford broadcast week is made up of Category Four programming, including such shows as *Lawrence Welk*, *Bozo the Clown*, and *Animal World* (Bill Burrud).

*Bozo the Clown's* position on the programming schedule of Channel 18, is made further necessary by requirements for children's programming established by the F.C.C. Religious programming aimed specifically at children is quite scarce.

The programming represented by category four at Channel 18, insofar as it provides an economic benefit to the station in the form of free secular programming, if purchased outright under film contract, would cost approximately \$25,000 over a period of 1 year.

The following represents a comparative analysis of the programming category portions of all four FC stations:

**ANNUAL REVENUE RECEIVED FROM AUDIENCE DONATIONS**

WHCT-TV CH. 18 HART-FORD	\$300,000
KVOF-TV CH. 38 SAN FRANCISCO	\$900,000
KHOF-TV CH. 30 LOS ANGELES	\$1,200,000
KHOF (FM) 99.5 RADIO LOS ANGELES	\$300,000

**ANNUAL REVENUE RECEIVED FROM CATEGORY THREE PROGRAMMING MONEY CONTRIBUTIONS**

WHCT-TV CH. 18 HART-FORD	\$50,000
KVOF-TV CH. 38 S.F.	\$75,000
KHOF-TV CH. 30 L.A.	\$50,000
KHOF (FM) RADIO L.A.	\$180,000

**PERCENTAGE OF AIR TIME**

	#1	#2	#3	#4
WHCT-TV CH. 18 HART-FORD	60%	25%	5%	10%
KVOF-TV CH. 38 S.F.	70%	20%	10%	none
KHOF-TV CH. 30 L.A.	70%	25%	5%	none
KHOF-FM 99.5 RADIO L.A.	45%	40%	15%	none

On May 12, between 8:30 p.m. and 9:30 the pastor and president of FC, and owner and operator of Channel 18, Dr. W. Eugene Scott made a statement which formed the basis of the complaint herein. That hour-long videotape and a transcript thereof are part of this record. That presentation represents a 1-hour portion of a 3-hour nightly television show on FC stations entitled, "THE FESTIVAL OF FAITH." The show normally includes religious music, preaching, religious fundraising, and extemporaneous discussion by Pastor Scott of any problems or events involving the ministry of FC.

**II. THE LABOR ORGANIZATION INVOLVED**

At all times material herein Local Union 42, International Brotherhood of Electrical Workers, AFL-CIO, herein called the Union, has been a labor organization within the meaning of Section 2(5) of the Act.

### III. THE ALLEGED UNFAIR LABOR PRACTICES

#### A. The Facts

At all times material herein it was not a condition of employment for any of the broadcast engineers of Channel 18 that they be members of FC. Moreover, the job functions of said employees were only the technical ones customary for television engineers in the industry generally. The broadcast engineer employees engaged in concerted activity in March. Lawrence Burke filed a complaint, along with other employees at Channel 18, with the Connecticut State Department of Labor in March concerning their having received their pay at a later time than they should have. The complaints were investigated, but were not resolved because of lack of jurisdiction. At that time, Respondent also withdrew certain mileage compensation benefits from the broadcast engineers.

In March 1975, FC entered into a Stipulation for Certification Upon Consent Election with the Union. A certification of representative in an appropriate unit of broadcast engineers issued on April 9, 1975. There is no evidence that any collective bargaining ever took place as a result of certification. The broadcast engineers organized on behalf of the Union in April 1977. Respondent became aware of this and told employees there could be no union in a church. In mid-April, Respondent changed its sick leave and holiday policy at a time when it knew of the organizational activity of the broadcast engineers.

The Union represented a majority of the broadcast engineers on April 26, and on May 12, Dr. W. Eugene Scott, Respondent's president and pastor, broadcasted FC's position on the issue of unionization. He stated Respondent's inalterably opposed position to unionization and the National Labor Relations Act, and during that broadcast Pastor Scott fired all broadcast engineers for their union activity and conditioned their rehire on abandonment of the Union. Scott also threatened to close down while making vitriolic statements attacking the Section 7 rights of FC's employees.

Despite Respondent's knowledge that the Union represented a majority of its employees, it changed the vacation time of the broadcast engineers, promoted two of them, discontinued funeral leave and changed the method of paying them without notifying or bargaining with the Union.

Lawrence Burke was involved in the Union's organizational campaigns in 1975 and 1977. Respondent was aware of his activities including the aforementioned concerted activity of complaining to the State labor board on his and other employees' behalf about the late receipt of pay. Burke was among those broadcast engineers discharged for union activity on May 12, but he was rehired on condition that he cease his union activity.

After his rehire, Burke continued to act concertedly, complaining, on May 17, about the scheduling of his worktime. On that day Burke left work at his scheduled time but on the following day when he reported to work the station manager informed him that Respondent considered him a "quit" employee.<sup>3</sup> Even though Burke in-

formed Respondent that he had not quit, he was not reinstated until December 1. Other employees had also complained to Respondent's management about scheduling of worktime immediately prior to Burke's second "discharge" but without disciplinary action by Respondent.

### IV. ANALYSIS AND CONCLUSIONS

#### A. The Jurisdictional Question

If Respondent operated merely as a church in the conventional sense, derived all of its revenues from donations from its congregation, and was not engaged in the operation of radio or television stations, it is well settled that the Board would not assume jurisdiction over it. Here, however, Respondent, in addition to having a church building as a place of worship for its "live" congregation in California, operates radio and television stations which are an integral part of FC.

Respondent contends that it is immune from governmental regulation of its labor policies and admits all the allegations of the complaint except the jurisdictional question and the second discharge of, and refusal to reinstate until December, Lawrence Burke.

It is undisputed that Channel 18 is an interstate operation licensed by the Federal Communications Commission as are television stations engaged in commercial activity for profit. Respondent, by virtue of being licensed by the Federal Communications Commission, has acquiesced in governmental "control" or "interference" in the operation of the same Channel 18 that it contends here is purely a religious activity and not subject to labor relations "control" or "interference" by another governmental agency. Such an argument lacks consistency and cogency.

The Board has asserted jurisdiction over radio and television operations that meet its standards and continues to do so because such operations clearly have an impact on interstate commerce. *WBSR, Inc.*, 91 NLRB 630 (1950); *Raritan Valley Broadcasting Company, Inc.*, 122 NLRB 90 (1958). The Board has set a standard of \$100,000 in gross revenues in asserting jurisdiction over such communications activities. Respondent herein derives in excess of \$3 million in gross revenues annually from its interstate broadcast of programs. Certainly, the impact on commerce is obvious. *Radio & Television Broadcast Technicians Local Union 1264, International Brotherhood of Electrical Workers, AFL-CIO, et al. v. Broadcast Service of Mobile, Inc.*, 380 U.S. 255 (1965); *General Telephone and Electronics Communications, Inc.*, 160 NLRB 1192 (1966); *Cablecom General, Inc.*, 190 NLRB 506 (1971).

Respondent also argues that Channel 18 as part of FC is a "church of the airways" whose nonprofit revenues must be excluded from consideration as commercial activity because it is a completely and "purely" religious operation. The Board has declined jurisdiction over purely religious and noncommercial, nonprofit religious organizations, but it has indeed asserted jurisdiction over those operations of nonprofit religious organizations which are "commercial" in nature. *Sunday School Board*

<sup>3</sup> Burke had previously walked off the job in protest of the working conditions without disciplinary action having been taken by Respondent.

of the Southern Baptist Convention, 92 NLRB 801 (1950); *The National Lutheran Home for the Aged*, 203 NLRB 408 (1973). In examining the extent or impact on interstate commerce the Board has looked beyond the nonprofit status, title or religious affiliation of an institution. *Drexel Home, Inc.*, 182 NLRB 1045 (1970); *The Rhode Island Catholic Orphan Asylum a/k/a St. Aloysius Home*, 224 NLRB 1344 (1976). Each of the stations and channels comprising Respondent's "network" received money from listener or viewer donations amounting to a total of \$2.7 million. Although Respondent uses that money to operate its nonprofit religious ministry, the Board has held that nonprofit public television stations, whose revenues from donors or sponsors meet the gross revenue jurisdictional standards, even though that money is used for operating expenses, come within the Board's jurisdiction. *Viewer Sponsored Television Foundation, d/b/a KVST-TV*, 217 NLRB 419 (1975); *Pacifica Foundation—KPFA*, 186 NLRB 825 (1970).

Respondent also receives "contributions" from other religious organizations for broadcast of their doctrinal television programs. In effect what occurs is a financial transaction or a barter, by which "airtime" is given in exchange for money. Such a transaction is commonly referred to as a "business" transaction. *Franklin Parish Broadcasting, Inc.*, 229 NLRB 556 (1977). Respondent's "network" derives in excess of \$355,000 from these "contributions." FC's Channel 18 receives \$50,000 from such transactions. Thus, the Board's jurisdictional standards are met based on those transactions alone. The fact that this money comes from religious organizations does not detract from their true commercial nature.

In addition to the foregoing, approximately 10 percent of Respondent's programming is secular. Most of this secular programming consists of reruns and syndicated variety shows (Lawrence Welk, Bozo, etc.). That programming involves a "barter arrangement" whereby Respondent obtains the free use of certain secular films every week, in exchange for allowing distributor commercial messages to be aired with the films on Channel 18. These commercials, the only ones on the station, do not generate any profit or compensation to Respondent except for the free use of the films for FCC-diversity requirements. These films are preceded and followed by voice-over announcements noticing the Hartford viewers as to the "non-remuneration" and public service nature of the films.

Respondent contends that these secular shows generate no donations and that the station is forced to continue the operation and maintenance cost during their broadcast, and that Channel 18 actually suffers a deficit from the airing of secular shows. Such contention is wholly lacking in merit. Without the secular shows the FCC would not permit Respondent to operate Channel 18, and without the operation of Channel 18 there would be donations whatsoever from that source. In addition, paying with free time rather than hard cash, inasmuch as the channel must be in operation anyway to broadcast its religious ministry, probably results in less expense to Respondent. Moreover, a cash payment for the secular programs would have to come from its only acknowledged

sources of revenue, donations of viewers and contributions from other religious organizations.

Respondent also contends that it does not "exist by the grace of Federal license," and its regulation by the Federal Communications Commission does not establish a compelling state interest for further Federal regulation by the National Labor Relations Board. It is true that Respondent *Church* does not exist by the grace of a Federal license, however, there is no question Respondent's Channel 18 does exist by the grace of a license, and Channel 18 and not the church building in Glendale, California, is what makes it a commercial enterprise subject to Federal regulation. The revenue generated by Channel 18 and the way it is generated are what places it within the jurisdictional standards applied by the Board. Therefore, under Board standards and precedents assumption of jurisdiction in this case is appropriate. It is noted that Respondent did not contest the assumption of Board jurisdiction in 1975, when it recognized the Union after certification by the Board involving the very unit concerned here.

The broadcast engineers are not required to be members of Respondent's church, nor is there any evidence that they in fact are members or contribute other than their services as broadcast engineers for which they received wages. Furthermore, the fact that Respondent is a nonprofit operation is not material. Nor is the fact that Respondent's main purpose for existence is to spread the gospel of Jesus Christ. In *National Lutheran Home for the Aged, supra*, the employer contended that the Board should not assert jurisdiction primarily because it would not effectuate the purposes of the Act to assert jurisdiction over the home because it is a church owned, operated and controlled institution which it operates in furtherance of its basic religious objectives. The home was owned and operated by the Maryland and Virginia Synods of the Lutheran Church of America. In rejecting the Employer's contentions, the Board concluded in that case that:

... the Home is not an institution over which we should refuse to assert jurisdiction. In *Bethany Home for the Aged*,<sup>2</sup> a case remarkably similar to the one now before us, we applied our decision in *Drexel*<sup>3</sup> in which we held that an institution's effect upon commerce was not to be measured by its nonprofit status, its title, its religious affiliation, or its occupants. We perceive no reason in this case for not adhering to the principles enunciated in our *Drexel* and *Bethany* decisions, and we therefore find that the Home not an institution over which we would refuse to assert jurisdiction. We therefore find that it will effectuate the purposes of the Act to assert jurisdiction over the Employer's operations at the Home.

<sup>2</sup> 185 NLRB 191.

<sup>3</sup> *Drexel Home, Inc.*, 182 NLRB 1045. Accord: *Evangelical Lutheran Good Samaritan Society d/b/a Eugene Good Samaritan Center*, 191 NLRB 35; *The Swanholm, an operation of The Martin Luther Foundation, Inc.*, 186 NLRB 45; *Good Samaritan Hospital*,

a/k/a Good Samaritan Home for the Aged, 185 NLRB 198; *Carroll Manor Nursing Home*, 202 NLRB 67.

Respondent contends further that application of the National Labor Relations Act to it will interfere with and interrupt the religious programming of Channel 18 and, therefore, violate its First Amendment rights. That contention is also without merit. In *The First Church of Christ, Scientist in Boston, Massachusetts*, 194 NLRB 1006 (1972), the Board rejected a similar contention stating that it was well settled that there is a distinction under the First Amendment between the freedom to hold religious beliefs and the freedom of conduct based on religious beliefs. The former is absolute and the latter may be curtailed for the protection of society and has been so curtailed in a wide range of areas including the labor relations area. The Act has as its objective the protection of society by the avoidance or minimization of industrial strife which interferes with the flow of commerce. The Board said (194 NLRB at 1008):

It is on this basis that we have previously held that an employer must comply with the provisions of the Act and bargain with a union despite claims that such bargaining would violate the employer's religious conviction. *Western Meat Packers, Inc.*, 148 NLRB 444, enforcement denied on other grounds 350 F.2d 804 (C.A. 10); *A. C. Rochat Company*, 150 NLRB 1402; *Cap Sante Vue, Inc.*, 172 NLRB 1158, and *Cambell, d/b/a Valley Convalescent Center*, 172 NLRB 174, both cases enfd. 424 F.2d. 879 (C.A.D.C.).

It is clear that Respondent is engaging in TV broadcasting which, in the generally accepted sense, is commercial. Based on the above, I conclude that Respondent is engaged in an enterprise which is in the normally accepted sense commercial, and that its operations are in commerce and affect commerce. And in view of the fact that the revenues from its broadcasting activities satisfy the Board's jurisdictional standards for such activities, I find that Respondent-Employer is engaged in commerce within the meaning of the Act.<sup>4</sup>

#### B. The Unfair Labor Practices

Since on or about May 10, 1977, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, its employees in the exercise of their rights as guaranteed in Section 7 of the Act by the following acts and conduct:

<sup>4</sup> Respondent cites in its behalf *Lutheran Church, Missouri Synod*, 109 NLRB 859 (1954), wherein the Board declined to assert jurisdiction over a religious organization which operated a radio station on a nonprofit and noncommercial basis in connection with, and in furtherance of, its religious objectives. It sold no advertising and received no compensation for the programs it broadcasted. In that case, however, the Board did not decide whether in its operation of KFZO the employer came within the jurisdiction of the Act. The Board found that it would not effectuate the policies of the Act to assert such jurisdiction over a religious organization which operated the station on a nonprofit and noncommercial basis in connection with, and in furtherance of its religious objectives. As may be seen by the cases cited herein, the Board has since decided to assert jurisdiction in these types of cases.

1. On or about May 12, at the TV station, Dr. W. Eugene Scott told employees they would not be rehired because of "bellyaching" about hours of work.

2. On or about May 12, at the TV Station, Dr. W. Eugene Scott told employees that they would be fired on the spot for talking about working conditions.

3. On or about May 12, at the TV station, Dr. W. Eugene Scott misrepresented to the employees that the TV station was exempt from the National Labor Relations Act.

4. On or about May 12, and at various other times at the TV station, Dr. W. Eugene Scott told employees he would shut down rather than see employees unionized.

5. On or about May 12, at the TV station, Dr. W. Eugene Scott told employees that going to the National Labor Relations Board was "wrong."

6. On or about May 12, and at various other times at the TV station, Dr. W. Eugene Scott told employees that they could not unionize.

7. On or about May 12, at the TV station, Dr. W. Eugene Scott told employees that Faith Center would go bankrupt before it allowed its employees to unionize.

8. On or about May 12, at the TV station, Dr. W. Eugene Scott told employees that they would be rehired only if they "quit fiddling around with labor negotiations."

9. On or about May 12, and at various other times at the TV station, Dr. W. Eugene Scott told employees that Faith Center would not be unionized.

10. On or about May 12, at the TV station, Dr. W. Eugene Scott told employees that there could be no negotiations by a church with a union or labor board.

11. On or about May 12, at the TV station, Station Manager David Footit told employee Joseph S. Mackora, Jr., that the engineers had been fired because of their union activities.

12. On or about May 12, at the TV station, Station Manager David Footit told employees their rehire was conditional upon their signing a statement acknowledging that they were employed by a "church."

13. In or around April 1977, at the TV station, Station Manager David Footit told Joseph S. Mackora, Jr., that there could be no unions in churches.

14. On or about May 23, at the TV station, Respondent unilaterally promoted employee George Tucker to chief engineer with a pay increase.

15. On or about May 23, at the TV station, Respondent unilaterally promoted employee Peter Esperanza to assistant chief engineer with a pay increase.

16. On or about March 28, Respondent unilaterally altered its turn-around pay and meal allowance benefits.

17. On or about March 30, Respondent unilaterally altered its mileage compensation benefits.

18. On or about April 12, Respondent unilaterally altered its sick leave policy.

19. On or about April 12, Respondent unilaterally reduced its holiday pay.

20. Respondent did, on or about May 12, discharge Joseph S. Mackora, Jr., Ray Wilson, Peter Esperanza, William LaPonta, George Tucker, and Lawrence Burke employed at its said TV station.

21. On or about May 18, at the TV station, Respondent discharged Lawrence Burke.

22. Respondent has, since May 18, the date of discharge, refused to, and continues to refuse to, reinstate Lawrence Burke to his former or substantially equivalent position of employment.

23. Respondent did discharge and refuse or fail to reinstate, promote, condition reemployment, and reduce vacation time of the employees named above for the reason that they joined or assisted the Union or engaged in other concerted activities for the purposes of collective bargaining, or other mutual aid or protection.

24. On or about May 12 or 13, Respondent did condition rehiring of employees at the TV station on their signing a statement of "employment."

25. On or about May 25, Respondent reduced the vacation time of its engineers at the TV station.

26. In or about mid-June, Respondent stopped mailing paychecks to its broadcast employees.

27. On or about June 20, Respondent discontinued the payment of funeral leave and otherwise changed its leave policy.

All broadcast engineers of Respondent employed at its TV station, exclusive of all other employees, professional employees, guards and all supervisors as defined in Section 2(11) of the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

On or about May 10, a majority of the employees of Respondent in the unit described above designated or selected the Union as their representative for the purposes of collective bargaining with Respondent.

At all times material herein the Union has been the representative for the purposes of collective bargaining of a majority of the employees in the said unit and, by virtue of Section 9(a) of the Act, has been, and is now, the exclusive representative of all the employees in the said unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

On or about May 10, and at all times thereafter, Respondent refused to bargain collectively with the Union as the exclusive representative of all the employees in the unit described above while contemporaneously engaging in a course of conduct which was designed to undermine the Union, destroy its majority status and make a fair election impossible.

#### C. Lawrence Burke

Lawrence Burke was employed as a broadcast engineer by Channel 18 for approximately 3 years, from 1974 to 1978. Lawrence Burke was active in the organizational campaign conducted by Local Union 42, International Brotherhood of Electrical Workers, AFL-CIO, in 1975 and in April 1977. He filed a complaint along with other employees at Faith Center—WHCT Channel 18 with the Connecticut State Department of Labor in March with respect to their late receipt of pay; which complaints were investigated with knowledge of Faith Center—WHCT Channel 18. The Connecticut State Department of Labor failed to resolve the employees' complaints for lack of jurisdiction.

On May 12, Lawrence Burke was discharged by Respondent for engaging in organizational activity on behalf of Local 42. He was reinstated to his former job on or about May 12 on condition that his union involvement and activities cease. Following his reinstatement, Lawrence Burke complained to Respondent's station manager, David Footit, and assistant station manager, Kenneth Boudreau, on or about May 17, concerning his scheduling or work hours and his pay. He left work at his normal posted scheduled time on or about May 17, and when reporting for work on May 18 he was informed by Station Manager Footit that Respondent considered him a "quit" employee for leaving the station during a telethon broadcast. On a prior occasion, in February 1977, Lawrence Burke left work during the telethon broadcast in protest because his paycheck was a week overdue. Respondent was aware of this walkout, but no disciplinary action was taken against him. On May 18, after being told by Station Manager David Footit that he had quit, Lawrence Burke responded that he had not quit his job. Burke was subsequently reinstated to his former position on or about December 3.

In the circumstances, I find that Lawrence Burke had not in fact quit his job, but Respondent terminated his employment because he, in concert with other employees, had complained to Respondent about receiving their pay late.

#### V. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### VI. THE REMEDY

Having found that the Respondent has engaged in, and is engaging in, certain unfair labor practices, I shall recommend that Respondent be ordered to cease and desist therefrom, and take certain affirmative action designed to effectuate the policies of the Act.

I have found that the Respondent discharged Joseph S. Mackora, Jr., Ray Wilson, Peter Esperanza, William LaPonta, George Tucker, and Lawrence Burke for reasons which are in violation of the provisions of Section 8(a)(1) and (3) of the Act. I shall therefore recommend that Respondent make them whole for any loss of pay they may have suffered as a result of the discrimination practiced against them. The backpay shall be paid with interest thereon to be computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).<sup>5</sup>

On the basis of the foregoing findings of fact, conclusions, and upon the entire record in this case, and pursuant to Section 10(c) of the Act, I hereby make the following:

<sup>5</sup> See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

## CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By interfering with, restraining and coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act Respondent has engaged in, and is engaging in, unfair labor practices proscribed by Section 8(a)(1) of the Act.

4. By discharging Joseph S. Mackora, Jr., Ray Wilson, Peter Esperanza, William LaPonta, George Tucker, and Lawrence Burke, thereby discriminating in regard to their hire and tenure of employment, in order to discourage membership in the Union, Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act.

5. The following employees of Respondent constitute an appropriate unit for the purposes of collective bargaining within the meaning of the Act:

All broadcast engineers of Respondent employed at its TV station, exclusive of all other employees, professional employees, guards, and all supervisors as defined in Section 2(11) of the Act.

6. On or about May 10, a majority of the employees of Respondent in the unit described above designated or selected the Union as their representative for the purposes of collective bargaining with Respondent.

7. At all times since April 26, the Union has been the representative for the purposes of collective bargaining of the majority of the employees in the said unit, and by virtue of Section 9(a) of the Act has been, and is now, the exclusive representative of all the employees of the

said unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

8. Respondent has failed and refused, and continues to fail and refuse, to bargain collectively with the Union as the exclusive collective-bargaining representative of the unit described above although requested to do so by the Union, while contemporaneously engaging in a course of conduct which was designed to undermine the Union, destroy its majority status, and make a fair election impossible.<sup>6</sup>

9. By the acts described above, Respondent did discriminate, and is discriminating, in regard to hire and tenure or terms and conditions of the employees named above, thereby discouraging their membership in the Union, and Respondent thereby did engage in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(3) of the Act.

10. By the acts also described above, Respondent did engage in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(5) of the Act.

11. By the acts described above, and by each of said acts, Respondent did interfere with, restrain, and coerce, and is interfering with, restraining, and coercing, its employees in the exercise of the rights guaranteed them in Section 7 of the Act, and hereby has been and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

12. The acts of Respondent described above constitute unfair labor practices affecting commerce within the meaning of Section 8(a)(1), (3), and (5), and Section 2(6) and (7) of the Act.

[Recommended Order omitted from publication.]

<sup>6</sup> *N.L.R.B. v. Gissel Packing Co., Inc.*, 395 U.S. 575 (1969).